

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: Squad #12	CCRB Case #: 201508496	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/06/2015 11:30 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 4/6/2017	EO SOL 4/6/2017	
Date/Time CV Reported Wed, 10/07/2015 3:40 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 10/07/2015 3:40 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. SGT Shibu Madhu	04772	944754	PBBN
3. CPT John Buttacavoli	00000	918799	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vincent Gambino	31824	954841	PBBN
2. LSA Michael Doyle	00000	917072	075 PCT
3. SGT Damon Martin	04173	920558	INT CIS
4. POM David Grieco	18061	940216	075 PCT
5. LT Kevin Cain	00000	936275	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Shibu Madhu	Abuse: Sgt. Shibu Madhu stopped § 87(2)(b)	§ 87(2)(b)
B.SGT Shibu Madhu	Abuse: Sgt. Shibu Madhu seized § 87(2)(b)'s property.	§ 87(2)(b)
C. Officers	Abuse: Officers searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
D.CPT John Buttacavoli	Abuse: Captain John Buttacavoli entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)

Case Summary

On October 6, 2015, at approximately 11:30 p.m., § 87(2)(b) was inside his mother § 87(2)(b)'s apartment at § 87(2)(b) in Brooklyn when he heard gun shots. § 87(2)(b) exited the apartment building and observed that his vehicle, which had been borrowed by his brother § 87(2)(b) was double parked outside and had bullet holes in the driver's side door and near the license plate. When § 87(2)(b) took out his phone to call § 87(2)(b) Sgt. Shibu Madhu, of the 75th Precinct, allegedly grabbed the phone out of his hand and put it in his pocket (**Allegations A and Allegation B**). Officers asked § 87(2)(b) if they could search his vehicle and after he gave them immediate verbal consent, two unidentified officers searched the vehicle (**Allegations C**). § 87(2)(b) returned to his mother's apartment and observed approximately five officers enter and exit the apartment (**Allegation D**). During this incident, § 87(2)(b) and § 87(2)(b) were arrested and charged with § 87(2)(b). After the execution of the emergency search warrant, the ten individuals were subsequently charged with § 87(2)(b). § 87(2)(b) was arrested for § 87(2)(b) pursuant to search warrant #§ 87(2)(b). He is currently incarcerated at Rikers and his criminal case is still pending.

There is no video evidence for this case.

§ 87(2)(g)

An attorney was consulted on this case.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation because of § 87(2)(b)'s arrest.
- § 87(2)(b) did not file a Notice of Claim (see 22 Board Review).
- § 87(2)(b) does not have any prior criminal convictions (see 20 Board Review).

Civilian and Officers CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (see 19 Board Review).
- Captain John Buttacavoli has been a member of service for 19 years and has six previous CCRB complaints, none of which were substantiated. § 87(2)(g)
- Sgt. Madhu has been a member of service for 8 years and has thirteen previous CCRB complaints. In case #200912984, physical force and premise entered and/or searched

allegations were substantiated and the Board recommended charges; the NYPD declined to prosecute and he received no disciplinary action. In case #201308582, a premise entered or searched allegation was substantiated and the Board recommended charges; the NYPD issued formalized training.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) described the two officers that searched his vehicle as white males and could not provide any additional pedigree details. Officers from the 75th Precinct, Patrol Borough Brooklyn North and ESU responded to the incident over the radio, which occurred during a tour change, and given that there was a shooting, presumably numerous officers responded without going over the radio, leaving a pool of dozens of officers. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegations not Pleaded

- **Vehicle search** Although Sgt. Madhu stated that he searched § 87(2)(b)'s vehicle during this incident, § 87(2)(b) did not mention his participation in the vehicle search. § 87(2)(g)
 - **Seizure of property** § 87(2)(g)
- § 87(2)(b)
- § 87(2)(b)

Recommendations

Allegation A-Abuse of Authority: Sgt. Shibu Madhu stopped § 87(2)(b)

Allegation B-Abuse of Authority: Sgt. Shibu Madhu seized § 87(2)(b) **s property.**

The following are not in dispute. § 87(2)(b)'s brother, § 87(2)(b) was involved in a shooting while driving § 87(2)(b)'s vehicle. § 87(2)(b) heard the shooting and exited his home at § 87(2)(b) in Brooklyn, to investigate, and saw his car, empty and parked in front of the home, with bullet holes. § 87(2)(b) then drove his car to the corner, away from the front of his home. Police officers arrived and § 87(2)(b) identified himself as the owner of the vehicle, initially provided little information about what he knew, and eventually told Sgt. Shibu Madhu that he believed § 87(2)(b) had been in the vehicle at the time of the shooting, and they should speak to his brother about it. Sgt. Madhu temporarily took possession of § 87(2)(b)'s cell phone. The cell phone was never searched. Two detectives arrived to the scene and asked § 87(2)(b) more questions about the shooting. Eventually, after officers entered his home and arrested a number of individuals, including § 87(2)(b) § 87(2)(b) was told he could leave the scene, his phone was returned to him, and his vehicle was towed as arrest evidence.

§ 87(2)(b) stated that as he took out his phone to call his brother, Sgt. Madhu grabbed the phone out of his hand and put it in his pocket. When § 87(2)(b) asked Sgt. Madhu and LT Doyle if Sgt. Madhu was allowed to take his phone, LT Doyle explained that he was allowed to because his vehicle was under investigation.

In addition to the radio run about shots fired, Sgt. Madhu observed shell casings in the street of the intersection and spoke to a witness at the corner deli who informed him that a Dodge Charger and a Ford Expedition had been shooting at each other. Soon after, an officer that Sgt. Madhu could not recall discovered a Dodge Charger two blocks away. Sgt. Madhu observed the bullet holes. When Sgt. Madhu asked § 87(2)(b) how his vehicle ended up in its current location, § 87(2)(b) initially stated that he had driven it to its current location after his brother left it at the corner of Wortman Avenue and New Jersey Avenue. When Sgt. Madhu asked § 87(2)(b) where he had been prior to moving the vehicle, § 87(2)(b) changed his statement and stated that he drove his vehicle to its current location after his brother left it double parked in front of § 87(2)(b).

At that point, § 87(2)(b) was detained pending the arrival of detectives to the scene so that they could interview him and find out his involvement in the shooting. While he was being detained, Sgt. Madhu asked § 87(2)(b) for his cell phone. § 87(2)(b) willingly provided it to him. Sgt. Madhu denied that he grabbed the cell phone out of § 87(2)(b)'s hand. Sgt. Madhu did not know what § 87(2)(b)'s involvement was in the shooting was, especially because he had initially placed himself at the scene of the shooting and then changed his statement. Sgt. Madhu seized § 87(2)(b)'s cell phone because § 87(2)(b) was part of the ongoing investigation and because Sgt. Madhu did not want him to alert anyone that could possibly destroy relevant evidence.

LT Doyle corroborated Sgt. Madhu's testimony and did not recall § 87(2)(b)'s phone being confiscated and denied that he or any officers grabbed the cell phone out of his hand.

The Event (see 24 Board Review) regarding this incident corroborates that officers were notified of a possible crime involving shots fired and provided with the vehicle descriptions of a blue Ford Explorer and a silver Charger. The event notes that the silver Charger was shot at and was still located at New Jersey Avenue and Wortman Avenue.

In order to stop someone, an officer must reasonably suspect that the person has committed, is committing or is about to commit a crime. People v. DeBour, 40 N.Y.2d 201 (1976) (see 27 Board Review). Patrol Guide Procedure 208-03 Arrests—General Processing states that among the items removed from people under arrest are items that are lawfully carried, but dangerous to life or would facilitate escape (see 30 Board Review).

§ 87(2)(g)
[REDACTED]

Allegation C-Abuse of Authority: Officers searched the vehicle in which § 87(2)(b) was an occupant.

It is not in dispute that when officers asked § 87(2)(b) if they could search his vehicle, which had bullet holes and was at the scene of a shooting, he immediately gave verbal consent and was not coerced into doing so. It is not in dispute that the interior of the vehicle and the trunk were searched and that no contraband was recovered.

Sgt. Madhu stated that he looked in the back of the vehicle and the trunk because he observed bullet holes in the vehicle and wanted to see if he could recover any additional ballistic evidence. He could not recall where else he looked in the vehicle or if any additional officers searched the vehicle with him.

For consent to be voluntarily, it must be a “true act of the will, an unequivocal product of an essentially free and unconstrained choice.” People v. Gomez, 5 N.Y.3d 416 (see 29 Board Review). In People v. Sanchez, 579 N.Y.S.2d 825, the court stated that police had probable cause when observing a vehicle that had been described by witnesses to a shooting that had just occurred, and therefore were justified in conducting a warrantless search of the vehicle (see 28 Board Review).

§ 87(2)(g)

Allegation D- Abuse of Authority: Captain John Buttacavoli entered and searched § 87(2)(b) in Brooklyn.

§ 87(2)(g)

It is undisputed that officers entered and searched § 87(2)(b) in Brooklyn. Additionally, it has been established that Captain Buttacavoli was the highest ranking member of the NYPD at the location and that Captain Buttacavoli authorized the entry and search into the apartment.

§ 87(2)(b) stated that while he was by his vehicle, the officers explained to him that they needed to go upstairs to the apartment to see if anyone pertaining to the shootout was hurt. Although he could not see the front entrance of his apartment building from where he was standing, he saw Sgt. Madhu and another officer that he could not recall walk towards the entrance of the building. When they returned a few minutes later, they stated that they could smell marijuana and knew that people were inside the apartment but could not gain entry. At first, Sgt. Madhu asked § 87(2)(b) to go upstairs and open the door. The officers then asked him to call § 87(2)(b) and his mother § 87(2)(b) to find out where he was and to see if she would come to the scene. The officers also told § 87(2)(b) that they were going to call ESU to knock down the door. § 87(2)(b) told Sgt. Madhu that he was not going to make the calls and told the officers that they did not have permission to knock down the door. In response, the officers stated that they did not need permission and were going to do it the “hard

way” because he was not cooperating with them. An officer asked § 87(2)(b) if he wanted to have the door knocked off the hinges. In response, § 87(2)(b) stated that they do not have permission to do anything and explained that his mother’s name is on the lease. The ESU officers and LT Doyle then went in the direction of the apartment building, while § 87(2)(b) remained by his vehicle for approximately twenty to thirty minutes before LT Doyle returned and told him that he was free to go.

Once he was released, § 87(2)(b) went to the apartment and stood to the side of the front door with his mother because the officers informed them that they could not enter the apartment. Although § 87(2)(b) could not see what the officers were doing inside of the apartment, he knew that there were approximately five inside, including Sgt. Madhu, because he saw them entering and exiting the apartment. § 87(2)(b) asked the officers how they could be in their apartment without a warrant and in response, the officers told him that they did not need a warrant because they had probable cause and had found marijuana.

Captain Buttacavoli (Board Review 33) stated that he was alerted to the incident via a radio run that described two vehicles, one blue and one grey engaged in a shoot-out near Pennsylvania Avenue and Wortman Avenue. This area had several shootings because there are two rival gangs, the “Rockstarz” and the “VCG.” When Captain Buttacavoli arrived at the location, he observed several bullet casings of different calibers on the ground. He was informed by an officer that a grey Charger had been located and that § 87(2)(b) had moved it to park. § 87(2)(b) informed officers, who then informed Captain Buttacavoli, that his brother handed him the keys and told him to move the vehicle. § 87(2)(b) informed officers that his brother was in his apartment located § 87(2)(b). The vehicle that § 87(2)(b) moved had two bullet holes in it, one near the front of the vehicle and one in the rear of the vehicle. There was no blood in the vehicle. Captain Buttacavoli noted that the lack of blood was not an indication that someone was not shot. Captain Buttacavoli has seen officers and civilians who were shot and there was no large amount of blood. Captain Buttacavoli went to § 87(2)(b)’s apartment with several other officers, whose identities he could not recall, to check on the well-being of § 87(2)(b)’s brother. Captain Buttacavoli noted that he did not necessarily believe that § 87(2)(b) was not involved in the shooting and he also went to the apartment to verify the story.

Captain Buttacavoli stated that he entered the apartment building and went to the apartment. As Captain Buttacavoli and the other officers approached the door of the apartment, Captain Buttacavoli heard a television playing through the door. The television’s volume was lowered until it was inaudible. Captain Buttacavoli and the officers knocked on the door several times and told the individuals inside that they were not leaving until they opened the door. Captain Buttacavoli did not hear any other noises from inside the apartment. After no one answered the door, Captain Buttacavoli decided to contact ESU to gain access to the apartment. Captain Buttacavoli was the highest ranking officer at the location and it was his decision to call ESU to gain access. Captain Buttacavoli, as the highest ranking officer, could command ESU to gain access and ESU was only in charge of what tactics to use to get into the apartment, but not the decision as to whether or not to enter. When ESU officers arrived, they knocked on the door and informed the occupants that ESU was present. The occupants opened the door. There were 10 people in the apartment. ESU officers informed the individual to exit the apartment one at a time,

which they did. None of the individuals had any injuries or appeared to be shot. Captain Buttacavoli did not hear or see any officer's request any of the occupants' names and he did not compare these names to the name provided by § 87(2)(b) as to who was involved in the shooting. Captain Buttacavoli believed that an officer would have taken their names, but he could not recall. The ESU officers entered the apartment to determine if there was anyone in the apartment with a gun and to see if there was anyone who was shot and in need of assistance. ESU returned and informed Captain Buttacavoli that there was marijuana and marijuana paraphernalia in the apartment. At that point, Captain Buttacavoli and other officers entered that apartment where he observed marijuana and other paraphernalia throughout the apartment. Captain Buttacavoli froze the location, had the individuals who were in the apartment arrested for marijuana possession, and applied for an emergency search warrant which was granted. Several guns and drugs were located as a result of the emergency search warrant. At one point, Captain Buttacavoli encountered a female who stated that she lived in the apartment. Captain Buttacavoli informed her that he needed to enter that apartment to ensure that everyone was okay and that she was not allowed in her apartment for now. He did not see anyone else on his way and the female did not provide any information as to what was going on in the apartment.

Captain Buttacavoli decided to enter the apartment because he believed that someone was shot and required assistance. He believed this due to the radio run about an active shoot-out, the several bullet casings that he observed on the ground, the vehicle with gun shots in it, § 87(2)(b) informing officers that he was not involved, but the individual that was driving the vehicle at the time was in § 87(2)(b)'s apartment, the television lowering its volume when officers arrived, and no one opening the door when they knocked. Additionally, he believed that this was part of a long history of gang violence where people who are struck with bullets do not seek their own medical attention, that there was a likelihood of retaliation due to this history, and that the person who drove the vehicle was likely involved in the shooting.

LT Doyle corroborated Captain Buttacavoli's account with the following exceptions. LT Doyle was at the apartment door without Captain Buttacavoli, who he called when LT Doyle decided he needed to contact ESU to gain entrance. Captain Buttacavoli authorized ESU to be sent to the location to gain access to the apartment. The apartment smelled of marijuana. A female, identified as § 87(2)(b) approached the officers either when the individuals were exiting the apartment or afterwards. She stated that she lived in the apartment and she was told that she was not allowed to be inside because they had "frozen" the location.

The Unusual Occurrence Report (Board Review 32) noted that the vehicle had two bullet holes in it, one in the front fender and one in the rear license plate.

According to People v. Dallas, 8 N.Y.3d 890 (2007), officers may enter and search a location under the "emergency doctrine" if they have reasonable suspicion to believe that there is an immediate need for their assistance to protect life or property, if the search is not motivated primarily by the intent to arrest and seize evidence, and if there is reasonable basis to associate the emergency with the area to be searched (see 18 Board Review). However, according to People v. Rodriguez, 77 A.D.3d 280 (App. Div. 2nd Dep't. 2010), and cases cited therein, the courts narrowly construe the emergency exception to the warrant requirement and require officers to believe the possibility of a victim at a specific location, such as a trail of blood, or a fleeing

§ 87(2)(g)

Squad Leader: _____ SI Nicholas Carayannis March 8, 2017
Signature Title/Print Date